

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
DELTA DIVISION

PAMELA L. NOLAN  
Plaintiff

V.

No. 2:97-CV-114-B-B

MAGNOLIA LADY, INC. d/b/a  
LADY LUCK RHYTHM & BLUES CASINO  
Defendant

**MEMORANDUM OPINION**

This cause comes before the court upon the defendant's motion for summary judgment. Upon due consideration of the parties' memoranda and exhibits, the court is ready to rule.

**FACTS**

The plaintiff, a black female, was hired by the defendant casino in June of 1994 as a greeter. The greeter position was eliminated shortly thereafter, but Jane Wasson rehired the plaintiff and Angela Pellateri in August of 1994 to work in the casino's mad money department.

In September of 1994, Wasson made a sexual advance toward the plaintiff while both were attending a party. The plaintiff rejected the advance. The plaintiff alleges that she began experiencing problems at work after she had rejected Wasson's advance. The plaintiff was called into Jeanne Whitney's office (Wasson's supervisor) because Wasson had complained about the plaintiff's work. The plaintiff was also a month late in receiving a raise that all of the other mad money employees received in March of 1995. When the plaintiff asked Wasson why her raise was delayed, Wasson allegedly responded "because you wouldn't do the things I wanted you to do." The plaintiff experienced similar problems with other raises. The plaintiff alleges that

Pellateri received preferential treatment during her employment with the defendant because Pellateri had moved in with Wasson and presumably did not reject Wasson's advances.

The plaintiff further contends that she was the subject of racial discrimination in addition to the sexual harassment. In October of 1995, during a departmental meeting, Wasson allegedly told the plaintiff that her department was "too black" and that plaintiff should pursue another career. In December of 1995, Wasson handed the plaintiff a sheet of paper to read on which was written a racially offensive joke about blacks.

On April 11, 1996, the plaintiff came to work and parked in or adjacent to a handicapped space.<sup>1</sup> The plaintiff states that she parked in that location due to construction in the employee parking lot and because of a recent rape of a female employee. Later that day, the plaintiff was terminated for poor work performance and repeated parking in a handicapped zone. The plaintiff filed her charge of discrimination with the EEOC on September 13, 1996.

## **LAW**

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 275 (1986) ("the burden on the moving party may be discharged by 'showing'...that there is an absence of evidence to support the non-moving party's case"). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden shifts to the non-movant to "go beyond the pleadings and by...affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324, 91 L. Ed. 2d at 274. That burden is not discharged by "mere allegations or denials."

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<sup>1</sup> The plaintiff contends that she was parked adjacent to the handicapped space, though in at least one portion of her deposition she states she was in the handicapped space.

Fed. R. Civ. P. 56(e). All legitimate factual inferences must be made in favor of the non-movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 91 L. Ed. 2d 202, 216 (1986). Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322, 91 L. Ed. 2d at 273. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the non-movant. Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 587, 89 L. Ed. 2d 538, 552 (1986).

The defendant asserts that any claim for sexual discrimination predicated upon events arising before March 17, 1996, is time-barred. Title VII requires an aggrieved party to file a charge of discrimination within 180 days of the alleged unlawful employment practice. 42 U.S.C. § 2000e-5(e)(1); Webb v. Cardiothoracic Surgery Assoc., 139 F.3d 532, 537 (5<sup>th</sup> Cir. 1998). The limitations period set forth in 42 U.S.C. § 2000e-5(e)(1) acts as a statute of limitations. Zipe v. Trans World Airlines, Inc., 455 U.S. 385, 393-394, 71 L. Ed. 2d 234, 243-244 (1982). The only event the plaintiff complains of within 180 days of her charge of discrimination is her termination from employment. Nothing but the plaintiff's own subjective belief suggests a causal relationship between her rejection of Wasson in September of 1994 and her termination in April of 1996, over a year and a half later. A subjective belief of discrimination, no matter how genuine, cannot support a claim of discrimination. Elliott v. Group Medical & Surgical Serv., 714 F.2d 556, 567 (5<sup>th</sup> Cir. 1983), cert. denied, 467 U.S. 1215, 81 L. Ed. 2d 364 (1984). Therefore, the court finds that the plaintiff's claim of sexual discrimination must be dismissed as time-barred.

The plaintiff asserts that her termination in April of 1996 was a continuation of the sexual

discrimination and was in retaliation for her rejection of Wasson. Courts have fashioned a continuing violation exception to overcome the 180-day filing requirement in certain exceptional circumstances where the unlawful employment practice manifests itself over time, rather than as a series of discrete acts. Webb, 139 F.3d at 537. Application of this theory relieves the plaintiff of proving that the entire violation occurred within the actionable period, so long as the plaintiff can show a series of related acts, one or more of which falls within the limitations period. Id. The court finds, however, that the continuing violation theory is not applicable in the present action as to the plaintiff's claim of sexual discrimination. The court finds that the allegedly time-barred acts were, if anything, a series of discrete acts, each of which should have put the plaintiff on notice of her potential claim for sexual harassment. Furthermore, the court has already stated that there is no evidence that the termination was a result of the plaintiff's rejection of Wasson's advances. Without a discriminatory event within the 180-day period, the continuing violation theory does not apply. Id. at 537-538. Accordingly, the court finds that the plaintiff's assertion of the continuing violation theory does not apply.

In regard to the plaintiff's claim of racial discrimination, the court finds that there are genuine issues of material fact including but not limited to whether the plaintiff was terminated because of her race. After reviewing the evidence submitted by the parties, the court has some doubt concerning the viability of the plaintiff's case. However, at this stage of the proceedings, the court must resolve all doubts and draw all reasonable inferences in favor of the non-moving party. See Thomas v. LTV Corp., 39 F.3d 611, 616 (5th Cir. 1994). Although the plaintiff has provided very little evidence in support of her claim of racial discrimination, she has provided the minimal amount necessary to survive summary judgment at the present time.

## **CONCLUSION**

For the foregoing reasons, the court finds that the defendant's motion for summary judgment should be granted as to the plaintiff's claim for sexual discrimination and denied in all other respects. An order will issue accordingly.

THIS, the \_\_\_\_ day of August, 1998.

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NEAL B. BIGGERS, JR.  
CHIEF JUDGE